

Message Text

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ACTION AF-10

INFO OCT-01 IO-13 ISO-00 MCT-01 HA-05 CIAE-00 DODE-00

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FM AMEMBASSY CAPE TOWN

TO SECSTATE WASHDC IMMEDIATE 6992

INFO AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

USMISSION GENEVA

AMEMBASSY PRETORIA

USMISSION USUN NEW YORK

C O N F I D E N T I A L CAPE TOWN 574

E.O. 11652: GDS

TAGS: PINS, PINT, SHUM, SF

SUBJECT: DECISION TO BAR USG OBSERVER FROM TERRORISM TRIAL

REF: PRETORIA 1637, AND PREVIOUS

1. SUMMARY: THE DECISION BY A SOUTH AFRICAN JUDGE TO BAR AN AMERICAN DIPLOMATIC OBSERVER FROM AN ONGOING POLITICAL TRIAL HERE CALLS FOR SOME RESPONSE ON OUR PART. WE SUGGEST A DIPLOMATIC NOTE AND A STATEMENT AT THE DEPT'S NOON PRESS BRIEFING. END SUMMARY.

2. REFTEL REPORTED A DECISION BY A SOUTH AFRICAN JUDGE NOT TO ALLOW AN EMBASSY OFFICER TO OBSERVE THE "IN CAMERA" PAN AFRICANIST CONGRESS TERRORISM TRIAL CURRENTLY TAKING PLACE IN BETHAL. ACCORDING TO PRESS REPORTS, THE PRESIDING JUDGE, MR. JUSTICE CURLEWIS, RULED THAT FOREIGN DIPLOMATS DID NOT HAVE A PROPER AND LEGITIMATE INTEREST IN THE CASE, WHICH HAS BEEN CLOSED TO THE PUBLIC BUT REMAINS OPEN TO THE PRESS ON CONDITION NAMES OF WITNESSES ARE NOT CONFIDENTIAL

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REVEALED TO THE PUBLIC. THIS IS, TO OUR KNOWLEDGE, THE FIRST TIME THAT DIPLOMATS HAVE BEEN REFUSED ENTRY TO A TRIAL IN SOUTH AFRICA. IT IS A RETROGRESSIVE STEP WHICH FURTHER ERODES ANOTHER FUNDAMENTAL HUMAN RIGHT (TO A PUBLIC TRIAL) IN SOUTH AFRICA. THE DECISION, WHILE PERHAPS NOT BINDING ON OTHER MAGISTRATES, SETS A PRECEDENT WHICH COULD BE USED IN OTHER CASES. UNLESS THERE ARE

SPECIAL REASONS FOR NOT DOING SO OF WHICH WE ARE NOT AWARE, WE BELIEVE THE ACTION CALLS FOR SOME RESPONSE ON OUR PART. WE RECOMMEND A DIPLOMATIC NOTE EXPRESSING CONCERN AND A PUBLIC COMMENT BY THE DEPARTMENT SPOKESMAN. IN ADDITION, WE SUGGEST THE DEPARTMENT DISCUSS THE MATTER WITH SUCH PRIVATE GROUPS AS THE AMERICAN BAR ASSOCIATION AND THE LAWYERS' COMMITTEE, WHICH MAY WISH TO MAKE PUBLIC COMMENT SUPPORTIVE OF OUR POSITION.

3. SUGGESTED LANGUAGE FOR NOTE TO SAG; QUOTE THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF FOREIGN AFFAIRS AND ON INSTRUCTION FROM THE DEPARTMENT OF STATE REFERS TO THE MARCH 20 DECISION BY MR. JUSTICE CURLEWIS NOT TO ALLOW THE ATTENDANCE OF AN AMERICAN DIPLOMATIC OBSERVER AT THE TRIAL OF PERSONS CHARGED UNDER THE TERRORISM ACT NOW BEING CONDUCTED IN BETHAL, TRANSVAAL. THE EMBASSY WISHES TO EXPRESS ITS CONCERN OVER THIS RESTRICTIVE DECISION. THE FUNDAMENTAL RIGHT OF DEFENDENTS TO AN OPEN TRIAL IS ONE RECOGNIZED BY JURISTS IN THE UNITED STATES AND SOUTH AFRICA ALIKE. IT PROVIDES THE MEANS TO ASSURE THAT JUSTICE IS NOT ONLY DONE BUT THAT IT IS SEEN TO BE DONE. IN BRINGING THIS MATTER TO THE ATTENTION OF THE DEPARTMENT OF FOREIGN AFFAIRS, THE EMBASSY WISHES TO EXPRESS ITS SURPRISE AND DISQUIET THAT THIS VIEW HAS NOT PREVAILED IN THE PRESENT CASE.

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THE EMBASSY OF THE UNITED STATES OF AMERICA RENEWS TO THE DEPARTMENT OF FOREIGN AFFAIRS ASSURANCES OF ITS HIGHEST CONSIDERATION. UNQUOTE

4. WE SUGGEST DEPARTMENT SPOKESMAN MAKE STATEMENT ALONG THE FOLLOWING LINES IN RESPONSE TO A QUESTION: QUOTE ON MARCH 20, A SOUTH AFRICAN JUDGE RULED THAT MEMBERS OF THE DIPLOMATIC CORPS WOULD NOT BE ALLOWED TO ATTEND AN ONGOING TRIAL OF 18 SOUTH AFRICANS CHARGED WITH OFFENSES UNDER THE TERRORISM ACT. THE GROUNDS ADDUCED FOR THIS DECISION WAS REPORTEDLY THAT FOREIGN DIPLOMATS DID NOT HAVE A PROPER AND LEGITIMATE INTEREST IN THE CASE. WE WERE SURPRISED BY THIS DECISION SINCE AMERICAN DIPLOMATIC REPRESENTATIVES REGULARLY ATTEND POLITICAL TRIALS IN SOUTH AFRICA, AS THEY DO IN OTHER COUNTRIES. THIS IS TO OUR KNOWLEDGE THE FIRST TIME THAT DIPLOMATIC REPRESENTATIVES HAVE BEEN REFUSED ADMISSION TO SUCH A TRIAL IN SOUTH AFRICA. WE THINK THE DECISION TO BAR SUCH FOREIGN OBSERVERS FROM A TRIAL IS DISTURBING STEP WHICH REFLECTS ADVERSELY ON THE SOUTH AFRICAN LEGAL SYSTEM WHICH HERETOFORE HAS BEEN NOTED FOR ITS OPENNESS. UNQUOTE.

5. PLEASE ADVISE.

BOWDLER

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